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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,409	11/18/2003	Harry Lee	0492611-0526 (MIT 10181)	7266
24280	7590	10/24/2006	EXAMINER BUSHEY, CHARLES S	
CHOATE, HALL & STEWART LLP TWO INTERNATIONAL PLACE BOSTON, MA 02110			ART UNIT 1724	PAPER NUMBER

DATE MAILED: 10/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/717,409

Applicant(s)

LEE, HARRY

Examiner

Scott Bushey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-124 is/are pending in the application.
- 4a) Of the above claim(s) 110-124 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-75 and 80-109 is/are rejected.
- 7) ☒ Claim(s) 76-79 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 June 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I, claims 1-109, in the reply filed on September 19, 2006 is acknowledged.

Drawings

2. The six pages of replacement drawings were received on June 1, 2004. These drawings are unacceptable since they have not been designated as "Replacement Sheets". Furthermore, text in the drawings should be replaced by reference numerals and lead lines directed to specific elements of the figures relative to the reference numerals. Descriptive text should appear in the specification with respect to the reference numerals, the combination of which would provide a clear disclosure of applicant's invention. Any amendments to the originally filed drawings or textual disclosure should avoid the insertion of new matter with respect to the originally filed application papers.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

Replacement Drawing Sheets

Drawing changes must be made by presenting replacement sheets which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments section, or remarks, section of the amendment paper. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). A replacement sheet must include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next

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Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and within the top margin.

Annotated Drawing Sheets

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheet(s) must be clearly labeled as "Annotated Sheet" and must be presented in the amendment or remarks section that explains the change(s) to the drawings.

Timing of Corrections

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings MUST be filed within the THREE MONTH shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 5-20, 26, 30-37, 43-48, 53, 54, 56, 63, 65-75, 80-86, 89-92, and 98-109 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Clough, Jr. et al (Figs. 1-6).

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5. Claims 1, 2, 5-13, 16, 17, 20, 26, 30, 32-34, 36, 37, 40-48, 53, 54, 56, 60, 63-65, 67, 68, 70, 71, 80-83, 89, 92, 98, 99, and 105-109 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Gruber (Figs. 1-4).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-18, 20-71, 80, 86-99, and 103-109 are rejected under 35 U.S.C. 103(a) as being unpatentable over Halberstadt et al.

Halberstadt et al (abstract; figs. 1 and 4; col. 5, lines 17-23, 40; col. 6, lines 21-42; col. 7, lines 16-17, 28-30, 58-65; col. 8, lines 1-8, 29-33) substantially disclose applicant's invention as recited by instant claims 1-18, 20-71, 80, 86-99, and 103-109, except for the deflectable gas-permeable portions being specifically formed as a wall of a liquid chamber, the volume of the chamber and area of the portions being as set forth by instant claims 20-25, and 27-29, respectively. The reference is also silent as to the deflection frequency and the diffusivity, solubility, or permeability of the portions. However, the reference does clearly disclose that the permeable membranes within the chamber may be arranged as shown around a spool, or alternatively, may be provided within a woven mesh (wall) structure. Furthermore, the permeable members are specifically designed for use with oxygen or carbon dioxide, within a cell culture medium for processing of a cell culture. It would have been obvious for an artisan at the time of

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the invention, to modify the specific dimensional characteristics, materials of construction and the diffusivity, solubility, or permeability of the portions, as well as operating the portions to deflect at a desired frequency within the cell culture medium, such being dictated by the cell cultures being acted upon by the process and apparatus of the invention.

Allowable Subject Matter

8. Claims 76-79 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art of record does not teach or fairly suggest connecting various tubes within the assembly to reservoirs of different relative pressures.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Bushey whose telephone number is 571 272-1153. The examiner can normally be reached on M-Th 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on 571 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Scott Bushey
Primary Examiner
Art Unit 1724


10-19-06

csb
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